

Article 40.

Regulation of Insurance Rates.

§ 58-40-1. Purposes.

The purposes of this Article are

- (1) To promote the public welfare by regulating rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory;
- (2) To authorize the existence and operation of qualified statistical organizations and require that specified services of the organizations be generally available to all admitted insurers;
- (3) To encourage, as the most effective way to produce rates that conform to the standards of subsection (1) of this section, independent action by and reasonable price competition among insurers;
- (4) To authorize cooperative action among insurers in the rate-making process, and to regulate such cooperation in order to prevent practices that tend to bring about monopoly or to lessen or destroy competition; and
- (5) To encourage the most efficient and economic marketing practices. (1977, c. 828, s. 2; 2005-210, s. 2.)

§ 58-40-5. Definitions.

As used in this Article:

- (1) Repealed by Session Laws 2005-210, s. 3, effective October 1, 2005.
- (2) Repealed by Session Laws 1991, c. 720, s. 6.
- (3) "Inland marine insurance" shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the Commissioner or as established by general custom of the business, as inland marine insurance.
- (4) "Member," unless otherwise apparent from the context, means an insurer who participates in or is entitled to participate in the management of a statistical organization.
- (5) Repealed by Session Laws 2005-210, s. 3, effective October 1, 2005.
- (5a) "Statistical organization" means every person, other than an admitted insurer, whether located within or outside this State, who performs one or more of the following functions:
 - a. Prepares policy forms or makes underwriting rules incident to, but not including, the making of rates, or rating plans or rating systems.
 - b. Collects and furnishes to admitted insurers or statistical organizations loss or expense statistics or other statistical information and data and acts in an advisory rather than a rate-making capacity. No duly authorized attorney-at-law acting in the usual course of his profession shall be deemed to be a statistical organization.
 - c. Makes rates, rating plans or rating systems, or develops loss costs. Two or more insurers that act in concert for the purpose of making rates, rating plans or rating systems, or developing loss costs and that do not operate within the specific authorizations contained in G.S. 58-40-60,

58-40-65, 58-40-70, and 58-40-75 shall be deemed to be a statistical organization.

- d. Collects data and statistics from insurers and provides reports from these statistics to the Commissioner for the purpose of fulfilling the statistical reporting obligations of those insurers.
- (5b) "Statistical plan" means the document used by a statistical organization to set forth which data elements are to be reported to the statistical organization and to describe the format in which the data must be reported.
- (6) "Subscriber," unless otherwise apparent from the context, means an insurer which is furnished at its request (i) with rates and rating manuals by a statistical organization of which it is not a member, or (ii) with advisory services by a statistical organization of which it is not a member.
- (7) "Willful" means in relation to an act or omission which constitutes a violation of this Article with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.
- (8),(9) Repealed by Session Laws 1987, c. 864, s. 66. (1977, c. 828, s. 2; 1987, c. 864, s. 66; 1991, c. 720, s. 6; 2005-210, s. 3.)

§ 58-40-10. Other definitions.

As used in this Article and in Articles 36 and 37 of this Chapter:

- (1) "Private passenger motor vehicle" means:
 - a. A motor vehicle of the private passenger or station wagon type that is owned or hired under a long-term contract by the policy named insured and that is neither used as a public or livery conveyance for passengers nor rented to others without a driver; or
 - b. A motor vehicle that is a pickup truck or van that is owned by an individual or by husband and wife or individuals who are residents of the same household if it:
 - 1. Has a gross vehicle weight as specified by the manufacturer of less than 14,000 pounds; and
 - 2. Is not used for the delivery or transportation of goods or materials unless such use is (i) incidental to the insured's business of installing, maintaining, or repairing furnishings or equipment, or (ii) for farming or ranching. Such vehicles owned by a family farm copartnership or a family farm corporation shall be considered owned by an individual for the purposes of this section; or
 - c. A motorcycle, motorized scooter, moped, or other similar motorized vehicle not used for commercial purposes.
- (2) "Nonfleet" motor vehicle means a motor vehicle not eligible for classification as a fleet vehicle for the reason that the motor vehicle is one of four or fewer motor vehicles hired under a long-term contract or owned by the insured named in the policy. (1987, c. 864, s. 67; 1989, c. 789, s.

1; 1995, c. 517, s. 25; 1995 (Reg. Sess., 1996), c. 730, s. 1; 2013-199, s. 20; 2013-410, s. 44; 2015-125, s. 6; 2016-90, s. 12.6(d).)

§ 58-40-15. Scope of application.

The provisions of this Article shall apply to all insurance on risks or on operations in this State, except for all of the following:

- (1) Reinsurance, other than joint reinsurance to the extent stated in G.S. 58-40-60.
- (2) Any policy of insurance against loss or damage to or legal liability in connection with property located outside this State, or any motor vehicle or aircraft principally garaged and used outside of this State, or any activity wholly carried on outside this State.
- (3) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.
- (4) Accident, health, or life insurance.
- (5) Annuities.
- (6) Repealed by Session Laws 1985, c. 666, s. 43.
- (7) Mortgage guaranty insurance.
- (8) Workers' compensation and employers' liability insurance written in connection therewith.
- (9) For private passenger (nonfleet) motor vehicle liability insurance, automobile medical payments insurance, uninsured motorists' coverage and other insurance coverages written in connection with the sale of such liability insurance.
- (10) Theft of or physical damage to nonfleet private passenger motor vehicles; except this Article applies to insurance against theft of or physical damage to motorcycles, as defined in G.S. 20-4.01(27)h., and moped, as defined in G.S. 20-4.01(27)j.
- (11) Insurance against loss to residential real property with not more than four housing units located in this State or any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance. Provided, however, that this Article shall apply to insurance against loss to farm dwellings, farm buildings and their appurtenant structures, farm personal property and other coverages written in connection with farm real or personal property; travel or camper trailers designed to be pulled by private passenger motor vehicles unless insured under policies covering nonfleet private passenger motor vehicles; residential real and personal property insured in multiple line insurance policies covering business activities as the primary insurable interest; and marine, general liability, burglary and theft, glass, and animal collision insurance except when such coverages

are written as an integral part of a multiple line insurance policy for which there is an indivisible premium.

The provisions of this Article shall not apply to hospital service or medical service corporations, investment companies, mutual benefit associations, or fraternal beneficiary associations. (1977, c. 828, s. 2; 1979, c. 714, s. 2; 1981, c. 888, s. 5; 1985, c. 666, s. 43; 1991, c. 339, s. 2; 2001-389, s. 5; 2015-125, s. 7; 2016-90, s. 12.6(e); 2017-102, s. 5.2(b).)

§ 58-40-20. Rate standards.

(a) In order to serve the public interest, rates shall not be excessive, inadequate, or unfairly discriminatory.

(b), (c) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 10.

(d) No rate is inadequate unless the rate is unreasonably low for the insurance provided and the use or continued use of the rate by the insurer has had or will have the effect of:

- (1) Endangering the solvency of the insurer; or
- (2) Destroying competition; or
- (3) Creating a monopoly; or
- (4) Violating actuarial principles, practices, or soundness.

(e) A rate is not unfairly discriminatory in relation to another in the same class if it reflects equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or like expense factors but different loss exposures, as long as the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, franchise, or blanket policy. (1977, c. 828, s. 2; 1985 (Reg. Sess., 1986), c. 1027, ss. 9.1, 10, 11.)

§ 58-40-25. Rating methods.

In determining whether rates comply with the standards under G.S. 58-40-20, the following criteria shall be applied:

- (1) Due consideration shall be given to past and prospective loss and expense experience within this State, to catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to trends within this State, to dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and to all other relevant factors, including judgment factors; however, regional or countrywide expense or loss experience and other regional or countrywide data may be considered only when credible North Carolina expense or loss experience or other data is not available.
- (2) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any differences among risks that have probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations. Those

classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.

- (3) The expense provisions included in the rates to be used by an insurer may reflect the operating methods of the insurer and, as far as it is credible, its own expense experience.
- (4) In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply. (1977, c. 828, s. 2; 1985 (Reg. Sess., 1986), c. 1027, s. 16; 1991, c. 644, s. 40; 2000-176, s. 2; 2004-203, s. 5(b).)

§ 58-40-30. Filing of rates and supporting data.

(a) With the exception of inland marine insurance that is not written according to manual rates and rating plans, every admitted insurer and every licensed statistical organization, which has been designated by any insurer for the filing of rates under G.S. 58-40-40, shall file with the Commissioner all rates and all changes and amendments thereto made by it for use in this State prior to the time they become effective.

(b) The Commissioner may require the filing of supporting data including:

- (1) The experience and judgment of the filer, and to the extent the filer wishes or the Commissioner requires, of other insurers or rating organizations;
- (2) The filer's interpretation of any statistical data relied upon; and
- (3) Descriptions of the methods employed in setting the rates.

(c) Upon written consent of the insured stating the insured's reasons, a rate or deductible or both in excess of that provided by an otherwise applicable filing may be used on a specific risk, in accordance with rules adopted by the Commissioner. The insurer is not required to obtain the written consent of the insured on any renewal of or endorsement to the policy if the policy renewal or endorsement states that the rates or deductible, or both, are greater than those rates or deductibles, or both, that are applicable in the State of North Carolina. The insurer shall retain the signed consent form and other policy information for each insured and make this information available to the Commissioner, upon request of the Commissioner.

(d) This section and G.S. 58-41-50 shall be construed in *pari materia*. (1977, c. 828, s. 2; 1985 (Reg. Sess., 1986), c. 1027, s. 17; 1987, c. 441, s. 8; 1995 (Reg. Sess., 1996), c. 668, s. 2; 2005-210, s. 4.)

§ 58-40-35. Filing open to inspection.

Each filing and supporting data filed under this Article shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge therefor. (1977, c. 828, s. 2.)

§ 58-40-40. Delegation of rate making and rate filing obligation.

(a) An insurer may itself establish rates based on the factors in G.S. 58-40-25 or it may use rates prepared by a statistical organization, with average expense factors determined by the statistical organization or with such modification for its own expense and loss experience as the credibility of that experience allows.

(b) An insurer may discharge its obligation under G.S. 58-40-30 by giving notice to the Commissioner that it uses rates prepared by a designated statistical organization, with such information about modifications thereof as are necessary to fully inform the Commissioner. The insurer's rates shall be those filed from time to time by the statistical organization, including any amendments thereto as filed, subject, however, to the modifications filed by the insurer. (1977, c. 828, s. 2; 2005-210, s. 5.)

§ 58-40-45. Disapproval of rates; interim use of rates.

(a) If, after a hearing, the Commissioner disapproves a rate, he must issue an order specifying in what respects the rate fails to meet the requirements of G.S. 58-40-20. If the Commissioner finds a rate to be excessive, he shall order the excess premium, plus interest at a rate determined in the same manner as in G.S. 58-36-25(b) as of the dates such rates were effective for policyholders, to be refunded to those policyholders who have paid the excess premium. If the Commissioner finds a rate to be unfairly discriminatory, he shall order an appropriate adjustment for policyholders who have paid the unfairly discriminatory premium. The order must be issued within 30 business days after the close of the hearing.

(b) Whenever a rate of an insurer is held to be unfairly discriminatory or excessive and the rate is deemed no longer effective by order of the Commissioner issued under subsection (a) of this section, the insurer shall have the option to continue to use the rate for the interim period pending judicial review of the order, provided that the insurer shall place in an escrow account approved by the Commissioner the purported unfairly discriminatory or excessive portion of the premium collected during the interim period. The court, upon a final determination, shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds to policyholders that are de minimis shall not be required.

(c) No person shall willfully withhold information required by this Article from or knowingly furnish false or misleading information to the Commissioner, any statistical organization designated by the Commissioner, or any insurer, which information will affect the rates, rating plans, loss costs, classifications, or policy forms subject to this Article. (1977, c. 828, s. 2; 1985 (Reg. Sess., 1986), c. 1027, ss. 12, 12.1; 2005-210, s. 6.)

§ 58-40-50. Statistical organizations.

(a) No statistical organization shall conduct its operations in this State, and no insurer shall utilize the service of such organization for any purpose enumerated in G.S. 58-40-5 unless the organization has obtained a license from the Commissioner.

(b) No statistical organization shall refuse to supply any services for which it is licensed in this State to any insurer admitted to do business in this State and offering to pay the fair and usual compensation for the services.

(c) A statistical organization applying for a license shall include with its application:

- (1) A copy of its constitution, charter, articles of organization, agreement, association, or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business, all duly certified by the custodian of the originals thereof;
- (2) A list of its members and subscribers;
- (3) The name and address of one or more residents of this State upon whom notices, process affecting it, or orders of the Commissioner may be served;
- (4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and
- (5) Any other relevant information and documents that the Commissioner may require.

(d) If the Commissioner determines that the applicant and the natural persons through whom it acts are qualified to provide the services proposed, and that all requirements of law are met, he shall issue a license specifying the authorized activity of the applicant. He shall not issue a license if the proposed activity would tend to create a monopoly or to lessen or to destroy price competition. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the State or until the license is suspended or revoked.

(e) Any change in or amendment to any document required to be filed under this section shall be promptly filed with the Commissioner.

(f) Repealed by Session Laws 2005-210, s. 7, effective October 1, 2005.

(g) Every statistical organization shall file a statistical plan with the Commissioner for approval for each line of insurance for which the organization requests to be licensed. The Commissioner may, in the Commissioner's discretion, modify the plan to collect additional types of data.

(h) No statistical organization shall engage in any unfair or unreasonable practice with respect to its activities.

(i) A statistical organization is considered an insurance company for purposes of the applicability of G.S. 58-6-7. (1977, c. 828, s. 2; 2005-210, s. 7; 2006-264, s. 45(a).)

§ 58-40-55: Repealed by Session Laws 2005-210, s. 8, effective October 1, 2005.

§ 58-40-60. Joint underwriting and joint reinsurance organizations.

(a) Every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance through such group, association, or organization, or by standing agreement among the members thereof, shall obtain a license from and file with the Commissioner:

- (1) A copy of its constitution, articles of incorporation, agreement, or association, and bylaws;
- (2) A list of its members; and
- (3) The name and address of a resident of this State upon whom notices, process affecting it, or orders of the Commissioner may be served.

(b) Any change in or amendment to any document required to be filed under this section shall be promptly filed with the Commissioner.

(c) If after a hearing, the Commissioner finds that any activity or practice of any such group, association, or other organization is unfair, unreasonable, or otherwise inconsistent with the provisions of this Article, he may issue a written order specifying in what respects the activity or practice is unfair, unreasonable, or otherwise inconsistent with the provisions of this Article, and requiring the discontinuance of the activity or practice. (1977, c. 828, s. 2; 1985 (Reg. Sess., 1986), c. 1027, s. 48; 1987, c. 441, s. 12; c. 864, s. 71.)

§ 58-40-65. Insurers authorized to act in concert.

Subject to and in compliance with the provisions of Articles 1 through 64 of this Chapter authorizing insurers to be members or subscribers of statistical organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, the creation, administration, or termination of a market assistance program, or carrying on of research. (1977, c. 828, s. 2; 1986, Ex. Sess., c. 7, s. 9; 1987, c. 731, s. 1; 2005-210, s. 9.)

§ 58-40-70. Insurers authorized to act in concert; admitted insurers with common ownership or management; matters relating to co-surety bonds.

With respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research, two or more admitted insurers having a common ownership or operating in this State under common management or control, are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer. To the extent that such matters relate to co-surety bonds, two or more admitted insurers executing co-surety bonds are authorized to act in concert between or among themselves the same as if they constituted a single insurer. (1977, c. 828, s. 2.)

§ 58-40-75. Agreements to adhere.

No insurer shall assume any obligation to any person, other than a policyholder or other insurers with which it is under common control or management or is a member of a market assistance program or of a joint underwriting or joint reinsurance organization, to use or adhere to certain rates or rules; and no other person shall impose any penalty or other adverse consequence for failure of an insurer to adhere to certain rates or rules. This section does not apply to mandatory or voluntary risk sharing plans established under Article 42 of this Chapter or apportionment agreements among insurers approved by the Commissioner pursuant to G.S. 58-40-95. Provided, however, that members and subscribers of statistical organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of such organizations either consistently or intermittently. The fact that two or more admitted insurers, whether or not members or subscribers of a statistical organization, consistently or intermittently use the rates or rating systems made or adopted by a statistical organization, or the underwriting rules or policy or bond forms prepared by a statistical organization, shall not be sufficient in itself to support a finding that an agreement

to so adhere exists, and it may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement. (1977, c. 828, s. 2; 1986, Ex. Sess., c. 7, ss. 10, 11; 1987, c. 731, s. 1; 2005-210, s. 10.)

§ 58-40-80. Exchange of information or experience data; consultation with statistical organizations and insurers.

Statistical organizations licensed pursuant to G.S. 58-40-50 and admitted insurers are authorized to exchange information and experience data between and among themselves in this State and with statistical organizations and insurers in other states and may consult with them with respect to rate making and the application of rating systems. (1977, c. 828, s. 2; 2005-210, s. 11.)

§ 58-40-85. Recording and reporting of experience.

The Commissioner shall promulgate or approve reasonable rules, including rules providing statistical plans, for use thereafter by all insurers in the recording and reporting of loss and expense experience, in order that the experience of such insurers may be made available to him. The Commissioner may designate one or more statistical organizations to assist him in gathering and making compilations of such experience. All insurers, for lines of insurance that require data to be reported, shall report their data to one of these designated statistical organizations. (1977, c. 828, s. 2; 2005-210, s. 12.)

§ 58-40-90. Examination of rating, joint underwriting, and joint reinsurance organizations.

The Commissioner shall, at least once every three years, make or cause to be made an examination of each statistical organization licensed pursuant to G.S. 58-40-50. The Commissioner may, as often as deemed expedient, make or cause to be made, an examination of each group, association, or other organization referred to in G.S. 58-40-60. This examination shall relate only to the activities conducted pursuant to this Article and to the organizations licensed under this Article. The officers, manager, agents and employees of any such organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. In lieu of any such examination, the Commissioner may accept the report of an examination made by the insurance advisory official of another state, pursuant to the laws of that state. (1977, c. 828, s. 2; 1995, c. 360, s. 2(b); 1995 (Reg. Sess., 1996), c. 742, s. 26; 2005-210, s. 13.)

§ 58-40-95. Apportionment agreements among insurers.

Agreements may be made between or among insurers with respect to equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods. The insurers may agree between or among themselves on the use of reasonable rate modifications for such insurance, agreements, and rate modifications to be subject to the approval of the Commissioner. (1977, c. 828, s. 2.)

§ 58-40-100. Request for review of rate, rating plan, rating system or underwriting rule.

(a) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or statistical organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be in writing. If the request is not granted within 30 days after it is made, the requestor may treat it as rejected. Any person aggrieved by the action of an insurer or statistical organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the Commissioner, and shall specify the grounds relied upon. If the Commissioner has information concerning a similar complaint he may deny the hearing. If the Commissioner believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. If the Commissioner finds that the complaint charges a violation of this Article and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in G.S. 58-2-50 or 58-2-70.

(b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1027, s. 15. (1977, c. 828, s. 2; 1985, c. 733, s. 3; 1985 (Reg. Sess., 1986), c. 1027, s. 15; 1987, c. 441, s. 13; 2005-210, s. 14.)

§ 58-40-105. Hearing and judicial review.

(a) Any insurer, person, or organization to which the Commissioner has directed an order or decision made without a hearing may, within 30 days after notice to it of the order or decision, make written request to the Commissioner for a hearing thereon. The Commissioner shall hear the party or parties within 20 days after receipt of the request and shall give not less than 10 days' written notice of the time and place of hearing. Within 15 days after the hearing, the Commissioner shall affirm, reverse, or modify his previous action, and specify his reasons therefor. Pending such hearing and decision thereon, the Commissioner may suspend or postpone the effective date of his previous action.

(b) Any order or decision of the Commissioner shall be subject to judicial review as provided in Article 2 of this Chapter. (1977, c. 828, s. 2.)

§ 58-40-110. Suspension of license.

(a) Repealed by Session Laws 1985, c. 666, s. 36.

(b) Subject to the requirements of this Article and of G.S. 58-2-70, the Commissioner may suspend or revoke the license of any statistical organization or insurer or impose a monetary penalty against any statistical organization or insurer where (i) the Commissioner has reason to believe that any statistical organization or insurer has violated any provision of this Chapter, or (ii) the statistical agent fails to comply with an order of the Commissioner within the time limited by such order, or within any extension thereof that the Commissioner may grant. The Commissioner shall not suspend the license of any statistical organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been taken, until the order has been affirmed. The Commissioner may determine when a suspension of a license shall become effective, and the suspension shall remain in effect for the period fixed by him unless he modifies or rescinds the suspension, or until the order upon which the suspension is based is modified, rescinded, or reversed.

(c) No license shall be suspended or revoked, and no monetary penalty shall be imposed except upon a written order of the Commissioner stating his findings, made after a hearing held

upon not less than 10 days' written notice to the person or organization, and specifying the alleged violation. (1977, c. 828, s. 2; 1985, c. 666, s. 36; 2005-210, s. 15.)

§ 58-40-115. Existing rates, rating systems, territories, classifications and policy forms.

Rates, rating systems, territories, classifications, and policy forms lawfully in use on September 1, 1977, may continue to be used thereafter, notwithstanding any provision of this Article. (1977, c. 828, s. 2.)

§ 58-40-120. Payment of dividends not prohibited or regulated; plan for payment into rating system.

Nothing in this Article shall be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers. A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers shall not be deemed a rating plan or system. (1977, c. 828, s. 2.)

§ 58-40-125. Limitation.

Nothing in this Article shall apply to any town or county farmers mutual fire insurance association restricting its operations to not more than six adjacent counties in this State, or to domestic insurance companies, associations, orders or fraternal benefit societies now doing business in this State on the assessment plan. (1977, c. 828, s. 2; 1985 (Reg. Sess., 1986), c. 1013, s. 10.1; 1989, c. 485, s. 53.)

§ 58-40-130. Financial disclosure; rate modifications; reporting requirements.

(a) The Commissioner may require each insurer subject to this Article to report, on a form prescribed by the Commissioner, its loss and expense experience, investment income, administrative expenses, and other data that he may require, for kinds of insurance or classes of risks that he designates. These reports are in addition to financial or other statements required by Articles 1 through 64 of this Chapter.

(b) The Commissioner may designate one or more statistical organizations to gather and compile the experience and data referred to in subsection (a) of this section for their member companies.

(c) Whereas the provisions enacted by the General Assembly in 1986 regarding modifications in North Carolina civil law may have a prospective effect upon the loss experience of insurers subject to this Article, the Commissioner is authorized to review each company's rates by type of insurance that are in effect on and after January 1, 1987, and, when and where appropriate, require modification of those rates.

(d) Each insurer subject to this Article shall record the experience and data referred to in subsection (a) of this section. Such experience and data shall be reported to the Commissioner on a form prescribed by the Commissioner by March 31 of each year for each one-year period ending on December 31 of the previous year.

(e) Repealed by Session Laws 2015-92, s. 4, effective June 19, 2015. (1985 (Reg. Sess., 1986), c. 1027, c. 13; 2005-210, s. 16; 2015-92, s. 4.)

§ 58-40-135. Good faith immunity for operation of market assistance programs.

There is no liability on the part of and no cause of action of any nature arises against any director, administrator, or employee of a market assistance program, or the Commissioner or his representatives, for any acts or omissions taken by them in creation or operation of a market assistance program. The immunity established by this section does not extend to willful neglect, malfeasance, bad faith, fraud, or malice that would otherwise make an act or omission actionable. (1985 (Reg. Sess., 1986), c. 1027, s. 28.)

§ 58-40-140. Extended reporting.

(a) Any policy for commercial general liability coverage or professional liability insurance wherein the insurer offers, and the insured elects to purchase, an extended reporting period for claims arising during the expiring policy period must provide:

- (1) That in the event of a cancellation permitted by G.S. 58-41-15 or nonrenewal effective under G.S. 58-41-20, there shall be a 30-day period after the effective date of the cancellation or nonrenewal during which the insured may elect to purchase coverage for the extended reporting period.
- (2) That the limit of liability in the policy aggregate for the extended reporting period shall be one hundred percent (100%) of the expiring policy aggregate that was in effect at the inception of the policy.
- (3) Within 45 days after the mailing or delivery of the written request of the insured, the insurer shall mail or deliver the following loss information covering a three-year period:
 - a. Aggregate information on total closed claims, including date and description of occurrence, and any paid losses;
 - b. Aggregate information on total open claims, including date and description of occurrence, and amounts of any payments;
 - c. Information on notice of any occurrence, including date and description of occurrence.

(b) In the event of a cancellation or nonrenewal of a health care provider's professional liability insurance policy by the insured or by the insurer, as permitted by G.S. 58-41-15 or G.S. 58-41-20, except for nonpayment of premium, there shall be a 30-day period after the effective date of the cancellation or nonrenewal during which the insured may elect to obtain an endorsement providing an extended reporting period of unlimited duration covering claims first reported during the extended reporting period and arising from the acts, errors, or omissions committed during the policy period and otherwise covered by the policy.

(c) An unlimited extended reporting period for health care provider professional liability claims must be provided if the insured: (i) dies; (ii) becomes permanently disabled and is unable to carry out his or her profession or practice; or (iii) retires permanently from his or her profession or practice after attaining the age of 65 and accumulating five or more consecutive years of claims-made coverage. (1985 (Reg. Sess., 1986), c. 1013, s. 17; c. 1027, s. 29; 1993, c. 409, s. 9; 1993 (Reg. Sess., 1994), c. 678, s. 21; 1999-294, s. 2.)